

Central Intelligence Agency



Washington, D.C. 20505

OLL 84-4556

29 November 1984

Robert A. McConnell, Esquire
Assistant Attorney General
Office of Legislative Affairs
Department of Justice
Washington, D.C. 20530

Dear Mr. McConnell:

I understand that the Department of Justice is currently formulating draft legislation that would make technical corrections to the FY 1985 Continuing Appropriation Resolution. The Computer Fraud provisions contained in § 2102 of Chapter XXI of Title II of that Resolution are of serious concern to the Agency because these provisions could be misinterpreted to apply to current or future Agency intelligence operations. We believe that the Computer Fraud legislation should be amended to contain an explicit exception for lawfully authorized intelligence and law enforcement activities. Including such an amendment in a bill of technical corrections would be appropriate since the legislative history to the Computer Fraud Bill, as discussed in detail below, clearly shows that Congress is willing to support such an amendment and that an amendment to this effect was inadvertently dropped at the last minute.

During the 98th Congress, the Agency closely monitored the status of proposed legislation in the area of Computer Fraud. After discussing the proposed legislation with DOJ, FBI and NSA, we informed the staff of HPSCI, SSCI, and the House and Senate Judiciary Committees of our concern that the Computer Fraud legislation being proposed could inadvertently prohibit legitimate intelligence activities. This issue also was discussed with Congressman Hughes, who sponsored the Computer Fraud legislation in the House, and Senator Thurmond, Chairman of the Senate Judiciary Committee. All agreed that it would be desirable to put an explicit provision into the Computer Fraud legislation that would permit lawfully authorized intelligence and law enforcement activities to continue. When the issue of Computer Fraud legislation was raised in the House/Senate conference over the FY 1985 Continuing Appropriation Resolution, it is our understanding that the conferees agreed to put in an

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intelligence activities exception that would apply to the Computer Fraud legislation and to a provision prohibiting the manufacture of fraudulent credit cards. It was also agreed that these two provisions, which had been tied together in free standing legislation, would be split apart when incorporated into the Continuing Appropriation Resolution.

Unfortunately, during the markup of the bill, the intelligence activities exception was made applicable only to the credit card provisions. Although the error was discovered a short time later, it was too late for the matter to be rectified since the members had reached agreement on the Continuing Appropriation Resolution and did not wish to open the bill up again for amendment, even to correct technical errors. However, on October 11, shortly before passage of the Continuing Appropriation Resolution, the matter of the intelligence activities exception was raised on the Senate Floor by Senators Laxalt and Rudman. In response to a query from Senator Laxalt as to why there was no exception, Senator Rudman, who was on the House/Senate conference committee, stated that the exception was inadvertently left out when the conference agreement was reduced to writing, and that he would support language next year to correct this error.

Because of this clear expression of Congressional support and to avoid any misinterpretation as to the applicability of the Computer Fraud legislation to intelligence operations, we believe that the Computer Fraud legislation must be amended to include an intelligence activities exception. The language of such an amendment, which tracks the exemption that was inadvertently omitted, would constitute a new subsection "f" to Section 1030 of Title 18. It would read as follows:

(f) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States.

This language has been accepted by the staffs of the HPSCI, SSCI, House Judiciary Committee and Senate Judiciary Committee, and Congressman Hughes, who originally sponsored the Computer Fraud legislation.

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I request that this proposed amendment be included in the upcoming bill of technical corrections. Including such an amendment in a bill of technical corrections would be appropriate because of the substantial support it has received in the past and the fact that enactment of it was prevented only through a technical error. I would appreciate confirmation of your support for such an amendment.

Sincerely,

/s/Charles A. Briggs

**Charles A. Briggs
Director, Office of Legislative Liaison**

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